

industry entitled "Updating Labeling for Susceptibility Test Information in Systemic Antibacterial Drug Products and Antimicrobial Susceptibility Testing Devices." FDA is now in the process of finalizing this guidance.

The Food and Drug Administration Amendments Act of 2007 (FDAAA) includes a requirement that FDA identify and periodically update susceptibility test interpretive criteria for antibacterial drug products and make those findings publicly available. The guidance informs industry of how FDA intends to comply with the FDAAA requirement. Specifically, the guidance describes procedures and responsibilities for updating information on susceptibility test interpretive criteria, susceptibility test methods, and quality control parameters in the labeling for systemic antibacterial drug products for human use. The guidance also describes procedures for making corresponding changes to susceptibility test interpretive criteria for antimicrobial susceptibility testing devices.

**Description of Respondents:** Respondents to this collection of information are holders of new drug applications and abbreviated new drug applications.

**Burden Estimate:** Application holders can use one of the following approaches

to meet their responsibilities to update their product labeling under the guidance and FDA regulations: (1) Submit a labeling supplement that relies upon a standard recognized by FDA in a **Federal Register** notice or (2) submit a labeling supplement that includes data supporting a proposed change to the microbiology information in the labeling. In addition, application holders should include in their annual report an assessment of whether the information in the *Microbiology* subsection of their product labeling is current or changes are needed. For human drugs, this information collection is already approved by OMB under control number 0910-0572 (the requirement in 21 CFR 201.56(a)(2) to update labeling when new information becomes available that causes the labeling to become inaccurate, false, or misleading) and OMB control number 0910-0001 (the requirement in 21 CFR 314.70(b)(2)(v) to submit labeling supplements for certain changes in the product's labeling and the requirement in 21 CFR 314.81(b)(2)(i) to include in the annual report a brief summary of significant new information from the previous year that might affect the labeling of the drug product).

In addition, under the guidance, if the information in the applicant's product labeling differs from the standards

recognized by FDA in the **Federal Register** notice, and the applicant believes that changes to the labeling are not needed, the applicant should provide written justification to FDA explaining why the recognized standard does not apply to its drug product and why changes are not needed to the *Microbiology* subsection of the product's labeling. This justification should be submitted as general correspondence to the product's application, and a statement indicating that no change is currently needed and the supporting justification should be included in the annual report. Based on our knowledge of the need to update information on susceptibility test interpretive criteria, susceptibility test methods, and quality control parameters in the labeling for systemic antibacterial drug products for human use, we estimate that, annually, only two applicants will submit the written justification described on the previous sentences and in the guidance. FDA also estimates that each justification will take approximately 16 hours to prepare and submit to FDA as general correspondence and as part of the annual report.

No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>

Reporting Burden	No. of Respondents	No. of Responses per Respondent	Total Responses	Hours per Response	Total Hours
Justification submitted as general correspondence and in the annual report	2	1	2	16	32

<sup>1</sup>There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: January 26, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket Nos. FDA-2008-E-0103, FDA-2008-E-0110, FDA-2008-E-0113, and FDA-2008-E-0114]

#### Determination of Regulatory Review Period for Purposes of Patent Extension; LETAIRIS

**AGENCY:** Food and Drug Administration, HHS.

#### **ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for LETAIRIS and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of Patents and Trademarks, Department of Commerce, for the extension of patents which claim that human drug product.

**ADDRESSES:** Submit written comments and petitions to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Beverly Friedman, Office of Regulatory

Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993-0002, 301-796-3602.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product LETAIRIS (ambrisentan). LETAIRIS is indicated for the treatment of pulmonary arterial hypertension (WHO Group 1) in patients with WHO class II or III symptoms to improve exercise capacity and delay clinical worsening. Subsequent to this approval, the Patent and Trademark Office received four patent term restoration applications for LETAIRIS (U.S. Patent Nos. 5,703,017; 5,840,722; 5,932,730; and 7,109,205) from Abbott GmbH & Co., KG, and the Patent and Trademark Office requested FDA's assistance in determining these patents' eligibility for patent term restoration. In a letter dated April 22, 2008, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of LETAIRIS represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for LETAIRIS is 1,871 days. Of this time, 1,691 days occurred during the testing phase of the regulatory review period, while 180 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective:* May 3, 2002. The applicant claims July 4, 2002, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the

IND effective date was May 3, 2002, the date a previous IND was removed from full clinical hold.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act:* December 18, 2006. FDA has verified the applicant's claim that the new drug application (NDA) for LETAIRIS (NDA 22-081) was initially submitted on December 18, 2006.

3. *The date the application was approved:* June 15, 2007. FDA has verified the applicant's claim that NDA 22-081 was approved on June 15, 2007.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 995 days of patent term extension for U.S. Patent Nos. 5,703,017; 5,840,722; and 5,932,730, and 225 days of patent term extension for U.S. Patent No. 7,109,205.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see ADDRESSES) written or electronic comments and ask for a redetermination by April 13, 2009. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 10, 2009. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 2, 2009.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2005-E-0423] (formerly Docket No. 2005E-0255)

### Determination of Regulatory Review Period for Purposes of Patent Extension; LUNESTA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for LUNESTA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

**ADDRESSES:** Submit written comments and petitions to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993-0002, 301-796-3602.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market